

## REMARKS

Claims 29-33 and 35-74 are in the application.

## FORMAL REJECTIONS

Claims 51, 60 and 67-73 are amended to overcome the antecedent basis rejection, as discussed in more detail below.

Claim 32 is amended to correct a technical error, and thereby overcome the rejection under 35 U.S.C. § 112, second paragraph.

Claim 51 is amended to overcome the rejection under 35 U.S.C. § 112, first paragraph, as allegedly failing to be supported by an enabling specification. While applicant does not accede to the propriety of the rejection, claim 51 is amended to recite that a “risk tolerance” of the user is determined. This phrase is supported in the specification on page 21, line 22-page 22, line 4; page 28, lines 4-5; and original claim 2. It is therefore respectfully submitted that claim 51 is fully supported by the specification.

Claim 60 is amended to overcome the rejection under 35 U.S.C. § 112, first paragraph, as allegedly failing to be supported by an enabling specification. While applicant does not accede to the propriety of the rejection, claim 60 is amended to recite that a “presentation of the records is in the form of a proposal, and the optimization emphasizes a likelihood of adoption of the proposal by a user.” This language is supported on page 19, lines 13-19 (“In fact, since non-compliance rates are expected to be high, an **optimization** based on a proposal requiring distinct efforts is **likely to be rejected or ignored**. On the other hand, simple changes in diet, which are **likely to be adopted**, may be very efficacious. Thus, on a pragmatic basis, the **proposal**

**preferably emphasizes** small dietary changes and a regimen of pills and/or supplements, even where an equivalent change might be possible through dietary modification.”)

Claim 67 is amended, without prejudice or disclaimer, to recite:

A method of producing a menu of selections, comprising the steps of:

- (a) receiving an inquiry from the user;
- (b) calculating a set of selections from a database responsive to the inquiry, each selection having an associated informational relevance to the inquiry, and at least one response having an associated economic parameter; and
- (c) automatically optimizing an economically efficient presentation of selections dependent on a joint analysis of the associated economic parameter and risk with respect to a likelihood of user adoption of a selection.

The production of a menu of selections is supported on page 4, line 11, and is intended to encompass a list or layout of potential selections. The calculation of a set of selections from a database, responsive to the inquiry, with cost information, is supported on page 9, lines 4-5; page 11, lines 21-23; page 14, line 20-page 15, line 2; page 21, lines 1-8; page 24, lines 3-5; page 26, lines 6-8; page 27, lines 13-16, etc. The calculation of a proposal is supported on page 28, line 22. The automatic optimization is generally supported by the page 28, line 22 and page 29, line 3, which clearly indicate that the optimization is performed after use input is received, and the optimization is not itself performed by the human. The fact that this presentation is economically efficient, and based on an economic parameter and risk, is supported on page 16, lines 9-13. The relation of the proposal to a likelihood of adoption by a user is supported on page 19, lines 13-19.

Claims 68-74 are amended to provide proper antecedent basis for claim elements.

While applicants do not agree that claims 67-74 as previously presented were not supported by the specification, it is believed that the present amendments moot the rejection.

## ART REJECTIONS

Claims 29, 44, 51, 59 and 67 are amended to recite that the optimization is performed “automatically”.

This term therefore makes clear that the claim does not encompass mental steps, and requires implementation by an automated mechanism, i.e., a machine. In the specification, this is described, for example, on page 26, wherein the application server 15 evaluates the models and generates the proposal.

Claims 29-33, 35-50, 52-59, 61-66 and 74 are rejected under 35 U.S.C. § 102(e) as being anticipated by Mayaud, US 5,845,255. Applicant congratulates the examiner in the quality of his search and analysis of this reference.

There are apparently two particular passages of Mayaud which are particularly pertinent to the issue of economic parameter analysis according to the present application. Col. 23, lines 40-46 state:

Relative cost-to-benefit data can also readily be prepared in outcome studies when individual drug costs are factored into the data, and such cost:benefit data can, in some circumstances have very substantial dollar value to drug benefits management companies whose objectives are to maximize the quality of care while minimizing the cost of that care.

Likewise, Col. 35, lines 33-43 state (cited by the examiner):

Referring to FIG. 6, now that a condition, PUD/Gastritis, has been selected, a new screen title, Select Drug 111, appears and selection of a drug to treat this condition proceeds. To aid the selection, a condition-specific, formulary drug list 118 is displayed in the next right-hand column of the Select Condition screen of FIG. 6 under Formulary Drug header 120. Alternatively, a physician's personal list of drugs may be displayed with formulary drugs highlighted. If desired, relative cost information can be included or alternative drugs may be ranked by preference of the formulary manager.

In fact, both these passages suggest that the cost-benefit of a drug is a static and extrinsically derived value, determined by “outcome studies” or the “formulary manager”. In such cases, automation is lacking, and the “optimization” if it occurs at all, may be quite imprecise.

With respect to allergy “risk” in optimizing a presentation according to economic and statistical risk factors, Mayaud states (Col. 31, lines 64-Col. 32, line 13):

Alternatively, the requisite information can be downloaded when the allergy review is conducted. Such allergy screening can alternatively be effected when a new drug is posted to Drug field 88. Either way, a positive system finding, indicating a risk of allergic reaction to the newly selected drug can activate a visual indicator or warning, for example, Allergies button 52 may blink and, if desired, an audible warning may sound alerting the physician to reconsider their selection. Alternatively, or additionally, an alert screen can tell the physician of an allergy if an attempt is made to prescribe an offending drug. Such alerts can be used to notify the physician of drug interactions, can provide adverse treatment warnings or can alert them to non-compliance with formulary recommendations, for example to the use of an unnecessarily expensive drug, and may be accompanied by suggestions for more appropriate alternative therapies.

This paragraph appears to state that a drug for which an allergy alert is triggered is still listed, and apparently the presentation is unaltered, except for the alert. Likewise, an “unnecessarily expensive drug” is also denominated by a warning. Thus, in contrast to the present invention, Mayaud does not teach or suggest a method comprising the distinct steps of at least (per claim 29):

- (c) determining a statistical risk associated with a respective record;
- (d) determining economic parameters associated with the subset of records; and
- (e) presenting the subset of records automatically jointly optimized based on the determined economic parameters, and the statistical risk associated with the selected record.

In particular, the presentation of a subset of records according to an automatic joint optimization is neither taught nor suggested by the reference. (It is noted that, per the pre-amendment version of claim 29, Mayaud does neither teaches nor suggests even a joint

optimization). Cost data is factored separately and distinctly from (allergic) risk data, and the presentation of such factors apparently remain independent of each other.

It is therefore believed that the rejections are overcome, and the application should be

• allowed.

Respectfully submitted,



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